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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/591,799	09/06/2006	Per Gustafsson	0104-0588PUS1	4667
2292 7590 05/14/2008 BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747				
EXAMINER GERRITY, STEPHEN FRANCIS				
ART UNIT 3721		PAPER NUMBER		
NOTIFICATION DATE 05/14/2008		DELIVERY MODE ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

### Office Action Summary

**Application No.**

10/591,799

**Applicant(s)**

GUSTAFSSON, PER

**Examiner**

Stephen F. Gerrity

**Art Unit**

3721

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 06 September 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 12-21 is/are rejected.
- 7) ☒ Claim(s) 11 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 September 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB-083)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date 9/6/06

## **DETAILED ACTION**

### **Priority**

1. Acknowledgment is made of applicant's claim for priority under 35 U.S.C. § 119. The certified copy has been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

### **Response to Preliminary Amendment**

2. Receipt is acknowledged of a preliminary amendment, filed 6 September 2006, which has been placed of record and entered in the file.

### **Information Disclosure Statement**

3. Receipt is acknowledged of an Information Disclosure Statement, filed 6 September 2006, which has been placed of record in the file. An initialed, signed and dated copy of the PTO-1449 form is attached to this Office action.

### **Specification**

4. The disclosure is objected to because the reference to claim numbers in the written description is improper, the written description must be complete in and of itself and not incorporate by reference the subject matter of a claim or claims. Applicant's attention is directed to page 2, lines 24-31. Appropriate correction is required.

5. The abstract of the disclosure is objected to because of the use of legal phraseology (means -- line 16). Correction is required. See MPEP § 608.01(b).

### **Claim Objections**

6. Claim 11 is objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim should refer to other claims in the alternative only -- the

recitation "claim 9 or claim 10 when referring back to claim 6" is not deemed to be in the alternative. See MPEP § 608.01(n). Accordingly, claim 11 has not been further treated on the merits.

### **Claim Rejections - 35 USC § 102**

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1-9, 12, 15, 17, 19/17 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Cook (US 3,622,421).

Concerning claims 1 and 17, the Cook reference discloses a device and method for producing container blanks including: a plurality of tools 16 supported by a rotary tool holder 14; a working path, as seen in figs. 1 and 2, along which each tool 15 is engageable with a web material W for joining, by sealing, opposite wall portions of the web material W along connecting portions 18, a return path, as seen in figs. 1 and 2, along which each tool 16 is disengageable from the web material W; each tool 16 moves with the web material W when the tool is moved along the working path; and the tool holder 14 acting a deflecting means, as seen in fig. 2 for the web material W when they move together along the working path.

Concerning claim 2, as seen in figs. 1 and 3, the tool 16 is operable between closed and open positions.

Concerning claim 3, the tool 16 comprises a base element 50 which is fixedly mounted to the tool holder 14 and an engaging element 52 which is pivotable relative to the base element 50.

Concerning claim 4, the engaging element 52 of each tool supports a rib 51 which engages the material web W in the closed position.

Concerning claim 5, the rib 51 of each tool 16 has an extent that corresponds to the extent of the connecting portion (where the seal is applied) of a container blank.

Concerning claim 6, each rib 51 is supported by an arrangement involving springs 56 which when moving the tool 16 to the closed position are arranged for a given compression, see col. 3, lines 34-38.

Concerning claim 7, the tool 16 is a heat sealing tool for joining of the web material, col. 2, line 45.

Concerning claim 8, there is a control means (the cam, the cam track, the rack and gear) which is arranged to engage the tool 16 with, and disengage the same from, the material web W.

Concerning claim 9, the control means includes a link mechanism 60, 58, 57 and a stationary cam structure 65, 64, and each of the tools 16, 52 being connected to the cam structure 65, 64 by the link mechanism 60, 58, 57, to control opening and closing of the tool 16, 52.

Concerning claim 12, as seen in fig. 3, the tool holder 14 is rotatably mounted on one side (as at 38).

Concerning claims 15 and 20, the tool holder 14 is arranged for continuous rotation during operation.

Concerning claim 19/17, the Cook reference teaches the pivoting of the engaging element 52 downwards to the base element 50 for clamping the material web W therebetween.

### **Claim Rejections - 35 USC § 103**

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cook (US 3,622,421) in view of Grevich et al. (US 4,305,240).

The Cook reference does not disclose that the link mechanism includes an articulated link arm which is arranged in an over-centered position. The Grevich et al. reference discloses a similar type of machine and method including a tool 35 which is pivoted between open and closed positions by the use of a link mechanism including an articulated link arm 40 arranged in an over-centered position. It would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to have modified the Cook machine to have had the link mechanism include an articulated link arm arranged in an over-centered position, as suggested by Grevich et al., as it is routine for a skilled artisan to combine old and well structures in a manner which achieves predictable results.

11. Claims 13, 14, 16, 18, 19/18 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cook (US 3,622,421).

Concerning claims 13 and 14, the Cook reference teaches that the punching station 10 is arranged upstream as opposed to downstream of the tool holder 14. The examiner takes Official Notice that it is old and well known in the container blank making art to position a punching station either upstream or downstream of a tool holder. It would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to have modified the Cook machine to have had the punching station be positioned downstream of the tool holder because it is notoriously old and well known to do so, and such would amount to no more than a rearrangement of the parts of the machine, without any criticality being found in the location of the punching station relative to the tool holder. Furthermore, it has been held that rearranging parts of an invention involves only routine skill in the art. In re Japikse, 86 USPQ 70.

Concerning claim 16, the Cook reference does not teach a registering mechanism positioned upstream of the tool holder and adapted to sense the tension in the material web and to adjust tension according to a predetermined value. The examiner takes Official Notice that it is old and well known in the container blank making art to provide a registering mechanism positioned upstream of the tool holder and adapted to sense the tension in the material web and to adjust tension according to a predetermined value, in order to maintain the tension in the material web at a value conducive to proper sealing of the web material. It would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to have

modified the Cook machine to have provided a registering mechanism positioned upstream of the tool holder and adapted to sense the tension in the material web and to adjust tension according to a predetermined value, in order to maintain the tension in the material web at a value conducive to proper sealing of the material web.

Concerning claim 18, the Cook reference does not disclose that the material web is folded longitudinally in the form of a W. The examiner takes Official Notice that it is old and well known in the container blank making art to fold a material web longitudinally in the form of a W, dependent on the type of container blank desired. It would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to have modified the Cook method to have the material web be folded longitudinally in the form of a W, as is known in the art, as a skilled artisan could have had the material web folded in many different manners dependent on the type of container blank desired.

Concerning claim 19/18, the Cook reference teaches the pivoting of the engaging element 52 downwards to the base element 50 for clamping the material web W therebetween.

Concerning claim 21, while the Cook method teaches rotating continuously, the examiner takes Official Notice that it is old and well known in the relevant art to rotate a tool holder (drum) in an indexing motion. It would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to have modified the Cook method to have had the tool holder rotated in an indexing motion, because such is



old and well known, and no criticality is seen as to whether the tool holder is rotated in a continuous motion or an indexing motion.

### **Conclusion**

**12.** The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The references listed on the attached form (PTO-892) are cited to show bag making and filling machines and methods. All are cited as being of interest and to show the state of the prior art.

**13.** Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen F. Gerrity whose telephone number is 571-272-4460. The examiner can normally be reached on Monday - Friday from 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3721

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Stephen F. Gerrity/  
Primary Examiner  
Art Unit 3721

8 May 2008